

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8303 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHAIRMAN

Versus

DIRECTOR OF PRIMARY EDUCATION

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Appearance:

MR AD OZA for Petitioner  
MR DA BAMBHANIA AGP for Respondent No. 1  
MR BS PATEL for Respondent No. 3  
MR KB PUJARA for Respondent No. 4  
MR DHIRENDRA MEHTA for Respondent No. 27  
MS MAMTA R VYAS for Respondent No. 31,79,80,81,  
82,83,84,85,86,87,88,89,90,91  
MR RS PANDYA for Respondent No. 70

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/10/97

## ORAL JUDGEMENT

In compliance of direction of this court, Ms. Gitaben Thakker, Chairperson, Mehsana District Education Committee, Mehsana is present in the Court. It is stated by her orally that she sincerely believe that there should not be any injustice to any senior Teacher in the matter of inter-district transfer. She says that she is being faced with various complaints from the teachers whose application for inter-district transfer were not considered by the earlier Committee. This has compelled her to approach this Court. She has directed her officers to process all the applications for inter district transfer and to effect transfers as early as possible. It is pointed out by her that there are as many as approximately 1600 applications for affecting inter-district transfers for coming in the District of Mehsana. However, in view of the Government resolution dated 12th June, 1997, now there is no hindrance in the matter of inter-district transfer and it is expected that all the concerned respondents may be accommodated within first four hundred numbers. She is hopeful that there will be no difficulty in transferring such teachers. By way of clarification, she has also stated that from amongst the cases of 83 teachers, recommended by the earlier committee, transfer of only five teachers were effected and not of twenty two teachers.

Mr. K.B Pujara and Mr. B.S Patel, learned counsel appearing for teachers seeking transfer in Civil Application Nos. 8351 of 1997 and 8484 of 1997 submits that the statement made by the Chair-person is not sincere and bonafide. In view of this, I proceed to decide this Special Civil Application No. 8303 of 1996 on merits.

By way of this Special Civil Application under Article 226 of the Constitution of India, the Chairperson of Mehsana District Education Committee, Mehsana has challenged the order dated 4th October, 1996 passed by the Respondent No. 2 - Secretary, Education Department, Government of Gujarat, Gandhinagar. On 28-9-1992, the District Education Committee, Mehsana vide its Resolution No. 13 (6) empowered its Chairman to make inter-state transfers. In pursuance to the said resolution, the outgoing Chairman transferred 83 teachers outside the District. It appears that the present District Education Committee headed by Ms. Gitaben Thakker was constituted on 11th December, 1995. The Director of Primary

Education by an order dated 3rd May, 1994 interfered with the order of the Chairman of the Committee in exercise of powers under Section 51 (1) of the Bombay Primary Education Act, 1947 {hereinafter referred to as "the Act of 1947"}. The Director felt that the decision of Chairman of the Committee was inconsistent with well established practice of preparing a list, which was required to be maintained known as "Seniority List" for the purpose of inter-district transfer of primary teachers from other Districts to Mehsana District. The Director expressed that if the order of the Chairman is allowed to implement this, it would cause great injustice and prejudice to other teachers who were included in the Wait List and who are otherwise senior to the teachers who had been transferred to Mehsana District. This order of the Director was challenged before this Court by way of Special Civil Application, which was registered as Special Civil Application No. 4741 of 1995. This Court without entering into wider question, expressed the view that as the action has been taken by the Respondent under Section 51 (1) of the Act of 1947 which is interim and interlocutory and is subject to final order to be passed by the State Government under Section 51 (3) of the Act. In view of this, the Court by its Order dated 9th November, 1995, directed the State Government to take appropriate decision under Section 51 (3) of the Act in accordance with law. In pursuance of the direction of this Court, the State Government heard the concerned parties and passed the impugned order dated 4th October, 1996 whereby the order of Director, Primary Education dated 3rd May, 1994 has not been approved.

The present Chairperson has challenged the said order of the State Government. Mr. A.D Oza and Mr. Hasurkar, learned counsels submitted that powers conferred on the School Board cannot be relegated to a individual. He has referred to Rule 40 of the Bombay Primary Education Rule, 1949. In my view, there is no substance in the contention as Section 51 (2)(b) empowers the School Board to delegate its powers and functions to any such member or Administrative Officer.

It is next contended that the State Government has not given any reason for reversing the order of Director. There is no substance in the second contention as well. It may be noticed that there was no appeal or revision before the State Government against the order of the Director. Section 51 empowers the Director to suspend the execution of any order or resolution of a school board or the doing of anything which is about to be done or is being done by or on behalf of the board in

excess of the powers conferred by, or contrary to the Act or the Rules or Regulations made thereunder or is otherwise unlawful. Sub-clause (2) of Section 51 provides that when a Director makes an order under sub-clause (1), he shall forthwith forward to the Board affected by it a copy of such order with a statement of the reasons for making it. Sub-clause (3) further provides that the State Government may annul, confirm, revise or modify any order made therein and make in respect thereof any other order. Thus, as per the scheme of Section 51, the Director is not a final authority in the matter of suspension, execution of any order or resolution of the Board. His orders are subject to approval of the State Government. In the instant case, State Government has not confirmed the order of the Director which required no hearing by the State Government. Question, in fact which arises for consideration is whether the succeeding Board can challenge its own decision, passed by the out-going Board. Section 11 of the Act provides that, "Every district school board shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name." However, I am not entertaining the question as the chair-person has now made a statement that in view of the instructions of the State Government dated 12th September, 1997 request of all the teachers can be accommodated.

In view of the aforesaid, I am not inclined to interfere with the impugned order of the State Government in exercise of powers under Article 226 of the Constitution of India. Special Civil Application, accordingly, stands rejected. Rule discharged. Interim relief stands vacated. No order as to costs.

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